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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/676,876

09/29/2000

Joseph Librizzi

JBP-521

3307

7590

04/11/2006

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EXAMINER

GEORGE, KONATA M

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 04/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/676,876

Applicant(s)

LIBRIZZI ET AL.

Examiner

Konata M. George

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 38-43 and 45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 38-43 and 45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

Claims 38-43 and 45 are pending in this application.

### ***Action Summary***

1. The rejection of claims 38-43 and 45 under the judicially created doctrine of obviousness-type double patenting over claims 1 and 2 of US Pat. 6,830,755 is hereby withdrawn as applicants have filed a terminal disclaimer.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 38-43 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okazaki et al. (US 6,268,333) in view of acknowledged prior art reference of Tanida et al. (EP 0 978 273).

Okazaki et al. discloses in column 1, lines 30-43 that it the combination of lavender and chamomile has been used in drinks, baths or as herbs for having a sedative effect and inducing sound sleep. It is also disclosed a composition further comprising an odoriferous compound (sandalwood) in addition to the lavender and chamomile. The prior art does not disclose the claimed

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concentration or the limitation of reducing cortisol levels and/or increasing sIgA levels.

Tanida et al. teach that sIgA levels can be significantly raised by the use of a perfume composition. The perfume is in a concentration of 0.5%, preferably 1%, wherein the perfume could be a mixed perfume having a floral bouquet note (See paragraphs 0015-0017). Paragraph 0020 teach that the composition can be in various forms such as cream, lotion, cream and the like. Paragraph 0022 teaches the experimental model.

It would have been obvious to one of ordinary skill in the art at the time the invention was to use the teachings of Tanida that mixed perfumes having a floral bouquet note or woody citrus note or a harval citrus note increases the sIgA levels in subjects in the invention of Okasaki which discloses a bath product having floral compounds (e.g. lavender and chamomile). The expected result would be a bath product containing floral compounds (e.g. lavender and chamomile) having increased the sIgA levels in subjects. With respect to the claimed concentrations, absent a clear showing of criticality, the determination of particular concentrations is within the skill of the ordinary worker as part of the process of normal optimization to achieve the desired results of the claimed composition.

3. Claims 38, 39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korbely et al. (HU 63559) in view of acknowledged prior art reference of Tanida et al. (EP 0 978 273).

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Korbely et al. teaches a cough paper handkerchief for soothing impregnated with a mixture of camphor, thymol, and oils of thyme pine needles, lavender, fennel, juniper and chamomile. The concentration of the lavender is 0.015 to 5% and the chamomile is 0.012%. The prior art does not disclose the limitation of reducing cortisol levels and/or increasing sIgA levels.

Tanida et al. teach that sIgA levels can be significantly raised by the use of a perfume composition. The perfume is in a concentration of 0.5%, preferably 1%, wherein the perfume could be a mixed perfume having a floral bouquet note (See paragraphs 0015-0017). Paragraph 0022 teaches the experimental model.

It would have been obvious to one of ordinary skill in the art at the time the invention was to use the teachings of Tanida that mixed perfumes having a floral bouquet note or woody citrus note or a harval citrus note increases the sIgA levels in subjects in the invention of Korbely which discloses a wipe having floral compounds (e.g. fennel, juniper, lavender and chamomile). The expected result would be a wipe containing floral compounds (e.g. lavender and chamomile) having increased the sIgA levels in subjects.

### ***Conclusion***

4. Claims 38-43 and 45 are rejected.

### ***Telephone Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number

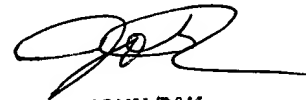
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is (571) 272-0613. The examiner can normally be reached from 8AM to 6:30PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached at (571) 272-0887. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8000 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Konata M. George



JOHN PAK  
PRIMARY EXAMINER  
GROUP 1600